

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs

6:06-CR-133

RAYMOND GARRETT,

Defendant.

APPEARANCES:

OF COUNSEL:

HON. ANDREW T. BAXTER
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for the Northern District of New York
Attorney for Government
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DAVID N. HURD
United States District Judge

ORDER

The defendant has moved for an order granting permission to withdraw his guilty plea pursuant to ¶ 11(a) of the Plea and Cooperation Agreement; an order granting permission to withdraw his guilty plea on the ground that the government has breached the Plea and Cooperation Agreement; an order compelling the Government to file a motion for downward departure pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5 K1.1, and for an evidentiary hearing to adjudicate his motion. (Docket No. 256). The

Government opposes. (Docket No. 275). Oral argument was heard on March 19, 2008. Decision was reserved and an evidentiary hearing was scheduled. (Docket No. 298).

The Government has now made a motion for a downward departure pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1. As a result, the mandatory minimum of life in prison no longer applies. The government has recommended a two level departure. The level of departure will be based on defendant's assistance and "other factors." United States v. Richardson, 521 F. 3d 149, 159 (2nd Cir. 2008).

Therefore, upon a review of all submissions, it is

ORDERED that

1. Defendant's motion for permission to withdraw his guilty plea is DENIED;
2. Defendant's motion to compel the Government to file a motion for downward departure pursuant to 18 U.S.C. §3553(e) and U.S.S.G. § 5K1.1 is DENIED as moot;
3. An evidentiary hearing limited to the assistance which the defendant provided is GRANTED;
4. The above evidentiary hearing will be held on December 12, 2008, at 11:00 a.m. in Utica, New York; and
5. The defendant will be sentenced immediately following the evidentiary hearing.

IT IS SO ORDERED.

Dated: November 12, 2008
Utica, New York.


United States District Judge